

## **SITE DEVELOPMENT PERMIT**

<b>FILE NO.</b>	<b>H19-005</b>
<b>LOCATION OF PROPERTY</b>	<b>780 East Brokaw Road (Southwest corner of East Brokaw and O'Toole Avenue).</b>
<b>ZONING DISTRICT</b>	<b>Heavy Industrial</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Combined Industrial/Commercial</b>
<b>PROPOSED USE</b>	<b>Site Development Permit to allow the installation of a 10-foot high electric security fence inside an existing perimeter fence on an approximately 5.47-gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exemption in accordance with CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures</b>
<b>APPLICANT ADDRESS</b>	<b>Carol Bausinger 550 Assembly Street, 5<sup>th</sup> Floor Columbia, SC 29201</b>
<b>OWNER ADDRESS</b>	<b>MVFT, LLC 760 E. Brokaw Road San José, CA 95112</b>

### **FACTS AND FINDINGS**

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** The project consists of a Site Development Permit to allow the installation of a 10-foot high electric security fence inside an existing perimeter fence on an approximately 5.47-gross acre site. No other physical improvements to the site existing building are proposed.
2. **Site Description.** The subject 5.47-gross acre site is currently developed with an existing Mission Ford vehicle dealership and is located at the southwest corner of East Brokaw Road and O'Toole Avenue. The site is surrounded by a commercial use (Fry's Electronics) to the west and south, Highway I-680 to the east, and industrial and commercial uses to the north.

3. **General Plan Conformance.** The Envision San José 2040 General Plan Land Use/Transportation Diagram designation for the subject site is Combined Industrial/Commercial. This land use designation is intended for commercial, office, or industrial developments or a compatible mix of these uses. The Combined Industrial/Commercial land use designation occurs in areas where there the existing development pattern exhibits a mix of commercial and industrial uses or in areas on the boundary between commercial and industrial uses. The subject site is developed with a truck dealership. The surrounding neighborhood is developed with a mix of commercial and industrial uses. The proposed fence is incidental to the existing industrial use of the property, which is consistent with the uses intended for this designation.
4. **Zoning Ordinance Conformance.** The project site is located within the HI Heavy Industrial Zoning District. Section 20.100.610 of the City of San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for erection, construction, enlargement, placement or installation of a building or structure on any site. The Development Standards for the HI Heavy Industrial Zoning District set forth are:

Development Standard	Requirement	Proposed Fence
Front setback	15 feet	71 feet
Side setback (structures)	0 feet from property line	6 inches minimum
Rear setback (structures)	0 feet from property line	6 inches minimum
Maximum height	50 feet	10 feet

- a. Site Development Permit. Section 20.100.610 of the San José Municipal Code states that a Site Development Permit is required prior to the issuance of any building permit for any structure on any site in conformance with the applicable zoning regulations. The proposed 10-foot electrical fence is defined as a structure. Therefore, the issuance of a Site Development Permit is required prior to the issuance of any building permit.
- b. Setbacks and Height. The proposed fence conforms with the development standards for a property in the Heavy Industrial Zoning District as summarized in the table above.
5. **Design Guidelines Consistency.** The electric fence consists of structural poles four inches in diameter, fiberglass poles approximately one inch in diameter, and attached horizontal wires. The top portion of the fence would be visible as the 10-foot tall fence would be located behind the existing 6-foot tall perimeter fence. Additionally, mesh will be installed on the chain link portion of the fence to further screen the electric fence. The electric fence will be minimally visible from the street as it would be set back 90 feet from the front property line on the westerly side of the property and 188 feet from the front property line on the easterly side of the property. The westerly side and rear of the subject site would be screened with the mesh, further screening the fence from adjacent properties. The easterly side would be behind an existing Caltrans chain link fence.
6. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, stormwater runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

- a. The project involves the installation of a 10-foot high electric fence inside the existing perimeter fence at an existing auto collision repair center within an urbanized industrial area. Therefore, the project would not have an unacceptable negative affect on adjacent properties regarding noise, vibration, dust, drainage, erosion, stormwater runoff, and odor and is considered exempt in accordance with CEQA Guidelines Section 15303(e) for New Construction or Conversion of Small Structures including accessory structures such as garages, carports, patios, swimming pools, and fences.

**7. Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.

- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies. As described above, the project is consistent with the Combined Industrial/Commercial General Plan land use designation. There are no applicable specific plans and area development policies for the subject site. Additionally, the project is found to be consistent with the following General Plan Policies:

- i. Community Design Policy CD-1.16: Strongly discourage gates and fences at the frontage of commercial properties to maintain an open and inviting commercial character and avoid the inhospitable appearance of security barriers.

*Analysis: The fence and gate would be set back 90 feet from the front property line on the westerly side of the property and 188 feet from the front property line on the easterly side of the property, and would remain open during business hours; therefore, the fence would not create an inhospitable appearance of security barriers given the specific project site. The fencing would be installed behind an existing perimeter fence that would be screened with a mesh. Only the top portion of the electric fence would be visible from the public right-of-way. The fence on the easterly setback area is adjacent to the Interstate I-680. The fence would be located behind an existing chain link fence owned by Caltrans. The rear setback is adjacent to parking spaces for the adjacent site. The side setback area to the west is adjacent to a retail building. There is landscaping on the adjacent property along the property line. Therefore, the fence would not be visible from the adjacent parking lot.*

- ii. Community Design Policy CD-5.5: Include design elements during the development review process that address security, aesthetics and safety.

*Analysis: Based on the narrative provided by the applicant, the site has been subject to at least thirteen incidents including break-ins, cutting holes in the existing chain link fence, and theft since April 2015. Despite employing a security guard, installing cameras, and installing standard perimeter fencing, the property is regularly subject to criminal activity. The electric fence would provide additional security, protect property, and improve safety without negatively impacting aesthetics based on the project location and surrounding area. As discussed above, with the proposed setbacks and landscaping, the fence has incorporated design elements to address the aesthetics of the security measures.*

- b. The Site Development Permit, as approved, conforms with the Zoning Code and all other provisions of the San José Municipal Code applicable to the project.

*Analysis: As discussed above, the project conforms to the development regulations for the HI Heavy Industrial Zoning District as set forth in Section 20.50.200 of the San José Municipal Zoning Code. The electric fence conforms with all setback and height requirements for a structure located in the Heavy Industrial Zoning District.*

- c. The Site Development Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.

*Analysis: The project is consistent with City Council Policy 6-30 Public Outreach Policy for Land Use and Development Proposals. A sign describing the proposed project has been posted in the front setback area of the site since April 10, 2019. A notice of the hearing was sent to surrounding neighbors and property owners within a 500 feet radius of the subject site.*

- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.

*Analysis: The 10-foot electric fence would be located six to twelve inches behind the existing, previously approved chain link fence on the front, sides, and rear. The existing fence wraps around all sides of the property. The easterly side would be located behind an existing Caltrans fence along the on-ramp of Interstate I-680. Furthermore, mesh would be installed on the existing chain link fence. The electric fence would be of similar materials and colors as the existing fence. Therefore, the fence would be compatible with the surrounding uses on-site and would be aesthetically harmonious.*

- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*Analysis: The subject site is located at the southwest corner of East Brokaw Road and O'Toole Avenue. The electric fence would be would be setback 90 feet from the front property line on the westerly side of the property and 188 feet from the front property line on the easterly side of the property. The westerly and southerly portion of the fence would be adjacent to the parking lot for a commercial use. The easterly portion of the fence would be adjacent to the on-ramp for Interstate I-680. The existing chain link fence on the easterly side of the property is owned by Caltrans.*

*The electric fence would be located behind an existing six-foot tall fence. The existing fence would have a mesh to screen the fence from the adjacent development. Only the top portion of the electric fence would be visible from the adjacent properties. The fence would not be adjacent to a residential use. The proposed project does not alter the existing building appearance. Therefore, the electric fence is compatible with and aesthetically harmonious with the adjacent development*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*Analysis: As described above, the project consists of the installation of a 10-foot high electric fence inside the perimeter fence of an existing truck dealership. The project occurs within an urbanized area and would not contribute any significant negative effects to the surrounding environment. No other physical improvements to the site and no*

*physical changes to the existing building are proposed. Therefore, given the scope of the proposal, the project would not have an unacceptable negative affect on adjacent properties.*

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*Analysis: The subject site has an existing fence that was approved in a previous Site Development Permit (File No. H97-009). The electric fence would be installed behind the existing chain link fence, leaving only the top portion of the electric fence visible. A mesh screen would be installed on the existing wrought iron and chain link fence to further screen the electric fence and the interior of the property. No other physical improvements are proposed at the subject site.*

- h. Traffic access, pedestrian access and parking are adequate.

*Analysis: The project meets the requirements for parking, curb cuts, and street access per the San Jose Municipal Code. The site is accessible from East Brokaw Road. The existing gate allowing pedestrian and vehicular access to the site would remain open during business hours. The project would not result in changes to the existing vehicular access, pedestrian access, or circulation. There are no proposed modifications in uses at the site, therefore there are no required modifications to the number of parking spaces.*

In accordance with the facts and findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or

contemplated under this Site Development Permit shall be deemed acceptance of all conditions specified in this Permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.

4. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
5. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
6. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Site Plan Request to Authorize a Security System for Mission Valley Truck Center, 780 E. Brokaw Road, San Jose, CA 95112" dated January 28, 2020 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04), with the exception of any subsequently approved changes.
7. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
8. **Barbed Wire.** In conjunction with the installation of the electric fence, the applicant shall provide photographic proof of the removal of barbed wire along the perimeter of the subject site. Proof of removal will need to be provided by the time of Building inspection or Code Enforcement will be notified.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
11. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

12. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
13. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements shall be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, H19-005, shall be printed on all construction plans submitted to the Building Division
14. **Fire Code Compliance.** Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
  - a. Applicant shall provide warning signs around the perimeter of the electric fencing.
  - b. Applicant shall provide a lock box at the existing gate that can facilitate site access by the Fire Department and/or Police.
  - c. Applicant shall provide a means of shutting off the power to the electric-security fence to the satisfaction of the Fire Chief.
15. **Affordable Housing Financing Plan.** The San José City Council (“City”) approved the Envision San José General Plan 2040 (“General Plan”) in 2011. The General Plan provide the framework for development located in San José.

The City is in the process of developing financing plans to help fund affordable housing and related amenities and services. The financing plans may include the creation of a (i) Community Facilities District(s); (ii) Enhanced Infrastructure Financing District(s); (iii) Property Based Improvement District(s); (iv) Mitigation Impact Fee program(s); (v) Commercial linkage fee program(s); and/or (vi) other financing mechanisms or combination thereof. For example, the City Council has directed Staff to complete studies and make recommendations related to commercial impact fees to help fund affordable housing. These efforts are on-going and there will continue to be other similar efforts to study various funding mechanisms for affordable housing.

By accepting this Permit including the conditions of approval set forth in this Permit, permittee acknowledges it has read and understands all of the above. Permittee further agrees that prior to the issuance of any building permit, the project shall be subject to , fully participate in, and pay any and all charges, fees, assessment, or taxes included in any City Council approved financing plans related to affordable housing, as may be amended, which may include one or more of the financing mechanisms identified above.
16. **Building and Property Maintenance.** The property management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
17. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
18. **Colors and Materials.** All colors and materials are to be those specified on the Approved Plan Set.

19. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
20. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
21. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
22. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
23. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
24. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Site Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **8<sup>th</sup> day of April, 2020.**

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement

Deputy